

Ireland vol 10

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S P E E C H, &c.

1782



K. Morris (H. R.) Viscount Mountmorres

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S P E E C H,

INTENDED TO HAVE BEEN SPOKEN,

ON THE

Appellant Jurisdiction

OF THE

H O U S E of L O R D S

O F

I R E L A N D,

B Y

Lord Viscount MOUNTMORRES.

L O N D O N:

Printed for T. EVANS, in the STRAND.

M.DCC.LXXXII.

S P E C I M E N

INTENDED TO HAVE BEEN BROKEN

OR TEST

Appellate Jurisdiction

HOUSE OF LORDS



THE

Lord Thomas MOUNTBATTEN

L O R D S

Witness for T. EVANS in the year

1900

A

S P E E C H, &c.

MY LORDS,

I Am to accompany what I have to trouble your lordships with, this day, with many apologies, from a long research into the right of your lordships jurisdicitive power; I am but too well apprized of the labour and difficulty of the enquiry, and am sensible of my presumption in troubling you with my thoughts on a subject of such difficulty.

Doubts, however, having been lately thrown out, founded upon antient errors and mistakes, it will be necessary, to trace this subject, to enter into the history of our jurisdicitive power from its origin, from the earliest periods of the history of this country.

My Lords, one, and only one, merit I shall claim, that I shall advance nothing that

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is not supported by evidence, by authentic materials, by the records of parliamentary proceedings both here and in another country.

I shall labour only to be explicit and satisfactory in a detail of facts, and depend only upon truth, which seldom wears and never wants ornament.

As the whole of this subject is not collected in any publication that I have ever heard of, it will not be, I hope, displeasing to your Lordships to have it collected in one point of view. If I should omit any transaction relating to this subject, it will be supplied, I hope, by other Lords of greater ability, and more knowledge in parliamentary proceedings than I can presume to possess.

My Lords, in the early ages of this country, and of her first connections with England, it is acknowledged, that, in consequence of the voluntary submission of the Irish to king Henry II. he granted them the laws and liberties

berties of England, and added afterwards a rule for parliamentary government, in the same individual form and terms with that of England, in which record it is said, " That causes of property are to be examined and corrected in full parliament, and no where else."

My Lords, this was renewed by his successor ; and it was provided, as before, that all laws and customs, enjoyed in England, should be likewise enjoyed in Ireland, of which the judicature in parliament was one of the most eminent. And it appears that Henry III. renewed this charter at Gloucester, ordaining that their constitution should be preserved entire upon the English plan, as his father king John had decreed when he was last in Ireland, and that all writs and matters of law should have their course in Ireland in like manner as in England.

My Lords, in early times, appeals were sometimes made from the court of King's-bench in Ireland to the court of King's-

bench in England, because the king, who was common judge of both nations, presided in that court, and sometimes the judges of England were consulted, in certain difficult points of law, from a want of men fully instructed in the constitution here during its infancy; but still there does not appear to be any pretence, all that time, that this was done *de jure*, or that any appeal then lay to any court without the kingdom, till at length, in the reign of Edward III. the English began to aim at extending their jurisdiction, and pretended that the ancient appeals to the kings in England implied a superiority in the English nation over the Irish, arguing, *a fortiori*, that, if appeals were made to the inferior courts in England, they might of consequence be made to the supreme court of all, the British parliament; and under these pretences, it seems they had actually taken cognizance of some judicial matters relating to Ireland. My Lords, upon this a remonstrance was made from the commons of Ireland in the twenty-sixth of Edward III. I shall, my Lords, dwell upon and specify this transaction, because I conceive the

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the judicature of this house to depend upon that charter ; the remonstrance set forth, That they had long endured intolerable oppression and injustice from men of authority in this kingdom, who, abusing their power, dispossessed them of their estates, and, under pretence that there was no appeal to the parliament of Ireland, supported themselves with impunity in this violence, reducing multitudes to the greatest poverty and extreme distress, unable, from the great charge and hazard in prosecuting their rights abroad, to carry their appeals to England : wherefore they besought the king to remedy this abuse, and maintain the privilege of their violated constitution ; in consequence of which, my Lords, the king, by ordinance of the forty-ninth of his reign, decreed, That, whereas it appeared an intolerable grievance, that his people of that nation should be thus oppressed, without a remedy, and that he was bound, by the nature of his supreme office, to see justice done to all his subjects, for the future justice should be done to them according to the known customs and laws of both kingdoms, and all ap-
peals

peals and proceedings upon errors of judgments, in the inferior courts of that realm, should be made and carried on in the parliament of this kingdom only.

And, my lords, if any thing was wanting to corroborate these ordinances and charters from the crown, it was supplied by a decree of Richard II. in the seventeenth year of his reign, when all the liberties and immunities of this kingdom were again confirmed, among which the judicature of the Irish parliament was included.

It does not appear, my lords, that the judicature of our parliament was molested till the eighth of Henry VI. but it is recorded by Mr. Prynne, in his animadversions on the fourth Institute, that at that time the prior of Lanthony in Wales having brought an action against the Irish prior of Mullingar, for the arrear of an annuity, in the common pleas, judgement was given against the prior of Mullingar, who thence brought a writ of error into the king's-bench of Ireland, where the judgement was affirmed; the prior of Mullingar

Mullingar appealed again to the parliament of Ireland, which parliament reversed both the former judgements; whereupon the prior of Lanthony removed the cause into the king's bench in England, but that court refused to be concerned in it, as having no power over what had passed in the parliament of Ireland; after which the prior of Lanthony appealed in the eighth of Henry VI. to the parliament of England, but neither would they determine thereupon; thereby declaring, that they had no pretensions to interfere in the judicature of this nation.

This custom of appeals being carried to England, seems to have gained some ground at this time, so as to become an object of the attention of the legislature, for, by 32d of Henry VI. ch. 3. it is enacted, that if any do appeal, in hope to be sent to England, the matter of appeal shall be declared before the governor of this land and the king's council; and, if the matter does not touch the king's person, the said governor shall send the said appeal to the king's-bench there, to be determined,

mined, as if it were an appeal of robbery ; and, if the said appeal be not found to be true, the appellant shall pay to the appellee his damages, taxed by the inquest, and twenty pounds, and over, and one hundred shillings to the king for his fine, saving the king's prerogative.

This act would not be sufficiently clear and explicit, were it not for the comment of your lordships ancestors, in the year 1703, when they founded their resolutions upon it, declaring those, who appealed from the judgment of this house and to a foreign jurisdiction, enemies to their country.

By an act of the 7th Henry VIII. this matter was farther guarded, and provision was made against these appeals, in matters determinable here, and they were obliged to find surety in the chancery, if the cause of appeal was found not to be true, to satisfy the defendant for his costs, damages, and expences.

These

These acts seem to accord with the statute of absentees, which made a forfeiture of land the consequence of non-residence, that they might have no cause for absence, that the people might have every advantage in this country, and that justice might be domesticated in their native land.

And the English lawyers themselves declared in favour of these rights, as appears in the year-books, in the 2d of Richard III. when a question arising about certain bales of wool, exported by a merchant of Waterford, which the treasury of Calais had seized in that port, the judges of England, occasionally pronounced that Ireland was not to be bound by English statutes, because they had no representatives in the English parliament; but that they had a parliament of their own, in which they made and amended laws, and that they had all manner of courts, with the same prerogatives as in England.

From this time forward, the judicature of this house stood unmolested for ages, till the middle of the reign of Charles II. I find only

one instance, my lords, in the Journals of the lords of England, for an application of this sort; and the entry which was made, and the difficulty of enforcing their order, plainly shews, that it was a novel, unprecedented, practice: the entry, my lords, is as follows, in 1621.

“ Whereas one Stafford, an Irishman, has
 “ brought his writ of error in this house, about
 “ certain lands in the county of Wexford, in
 “ Ireland, the lord chief justice moved to
 “ know the pleasure of this house, whether
 “ the writ, in that case to be awarded,
 “ should be directed to the sheriff of Middle-
 “ sex, or to the sheriff of the county in Ire-
 “ land, where the lands lay; and it was or-
 “ dered, that the writ, in this case to be
 “ awarded, shall be directed to the chief jus-
 “ tice of the king’s-bench in Ireland, to order
 “ the sheriff of the county of Wexford, in
 “ Ireland, to warn the party defendant to
 “ appear before this house on a day ap-
 “ pointed to hear errors.”

My

My lords, you will find the rules for proceedings, in appeals and writs of error, in your Journals, in 1642 and 1662, and a regular course of upwards of forty applications from that period, till the year 1717.

My lords, during the long interval of our parliament, for twenty-six years, there were six precedents of appeals from this country to the lords of England.

The first, that occurs in the Journals of the lords of England, was, in a case between Sir Robert Nugent and colonel Talbot, the famous duke of Tyrconnel; it was in the year 1670, and I shall beg leave to say a word upon the particulars of that case,

Colonel Talbot had been an active solicitor for the Roman Catholics in the court of claims, and had obtained a bond of 4000*l.* from Sir Robert Nugent, provided he procured him his estate in the court of claims; but, his own innocence being clear, he obtained it without the intervention of colonel

Talbot, who, notwithstanding, sued him upon the penalty, in the court of chancery in Ireland; from their determination Nugent appealed to the lords of England, but their conduct shews, that they were not desirous of interfering in the jurisdiction of this country; for the cause, however flagrant, was dismissed, and a bill of review was ordered to be had in the chancery of Ireland.

My lords, as I have before observed, in the long interval of twenty-six years, in our parliaments, there are only six precedents, which occur, of appeals from this country to the house of lords of England, till the two jurisdictions interfered in the famous case of the bishop of Derry, in the latter days of king William.

My lords, the validity of appeals to this house was never questioned till the year 1698.

But, previous to that period, an appeal having been brought before the house of lords of England, by the governor and society of the Londonderry plantation, against a judgement,

ment, which had been given by this house in favour of the bishop of Derry, though no objection had been previously pleaded, by the parties, to our jurisdiction, the house of lords of England thought proper to declare, that the proceedings before this house were before an incompetent judicature, and that the chancery here ought to proceed as if no such appeal had been made to the lords of Ireland; a composition, however, taking place between the parties, this house was not under a necessity of enforcing their own order: the reasonings of the council upon our jurisdiction are reported in the case of the bishop of Derry, in Sir Bartholomew Shower's reports, though the argument in our favour seems to be imperfect and mutilated.

As this case of the bishop of Derry, in 1698, was the first in which the jurisdictional power of this house was called in question, your lordships will, no doubt, be curious to know upon what plausible plea that opinion was founded.

It

It was, perhaps, one of the most extraordinary crotchets that legal subtilty ever devised.

The reasoning of the council was, that the Irish parliament were debarred of their jurisdiction right by Poyning's law, and that, as the constitution here was inverted, and no legislative matter could be taken up here, unless it originated from the crown, before the parliament was convened, by Poyning's law, the same rule was to take place in other matters, in judicial cases.

This mode of reasoning is so whimsical and extraordinary, that I am compelled to justify my opinion, by reading to your lordships a curious paper which I have in my hand, it is a copy of the printed case, which was drawn up by that great lawyer, Sir B. Shower, in the case of the bishop of Derry, which was communicated to me by a learned friend of mine in another country, and which led the house of lords of England, in receiving an appeal from this house.

“ The

“ The society of Londonderry having appealed to your lordships from the lords of Ireland, the appellants do pray that the said appeal may be received.

“ 1st, That no appeal or writ of error, as is conceived, lies to the house of lords in Ireland in any case; but the errors of the courts of law and equity there are to be reformed in England, and the appeal to the house of lords there is of dangerous consequence, and may tend to the hazard of the English constitution and government there; if the same should be allowed by your lordships, it will equal the jurisdiction of the lords of parliament in Ireland to that of the English peerage, which was never the design of Poyning's law.

“ 2dly, In case the house of lords there have a power of hearing and examining such appeals, yet their orders are not final, but subjected to re-examination before your lordships, who are the supreme court of judicature, as well for that as for this kingdom, as it is
humbly

humbly hoped will appear to every man who shall impartially, among other reasons and authorities, consider, 1. The true original nature and title of property in Ireland, as derived from and under the crown of England. 2. The equality of reason for a subordination in judicature to the judicial power, as in the legislative to the legislative power, in England.

“ 3dly, The protection which the plantation of Ireland always receives from the mother country, with the vast sums of money she owes England. The dependency resulting thence in all respects whatsoever, which, if appeals there be final, will be in a great measure destroyed.”

What reasoning, what inductions, what a design to mislead, by a reference to somewhat that was not clearly understood ! What has Poyning's law to say to the judicial power of this house ? Or, in plain English and common sense, what analogy is there between the law which regulates the passing of bills through
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the council and the jurisdicative power? No more, my lords, no more analogy, than between the jurisdiction of our parliament and the law of gravitation or the doctrine of fluxions!

It is to be observed, my lords, that the argument of the council on our side, in the case of the bishop of Derry, in Shower's reports, is purposely blanked and mutilated.

My lords, it would be necessary for me to mention the great case of Sherlock and Annesly in the year 1717, when this house was suspended from its jurisdiction; but the noble representation of your lordships ancestors, and the detail of the merits of the case contained in it, will save your lordships and me much trouble. I cannot suppose your lordships to be unapprized of this important transaction, which is also detailed in the state-trials. All that I have to say upon it is, that the widow Sherlock pleaded here in forma pauperis; that, upon the face of it, it was a determination in favour of the weak against the strong and powerful,

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erful; that the representation which was made upon that occasion does eternal honour to the great prelate, to archbishop King, who framed it, and to your lordship's ancestors, who unanimously concurred in it.

This representation having been read at your table, and being so able and so conclusive as to need no comment, I shall proceed to mention the last case in which the jurisdiction of this house was called in question.

My lords, the last case, in which the jurisdiction of this house was called in question, was that of the earl of Meath, and Cecilia, countess of Meath, his wife. In 1692 an appeal was brought to this house, from the chancery of the county palatine of Tipperary, by lord Meath, against a decree given in that court in favour of lord Dudley and Ward; to this appeal lord Dudley pleaded his peerage as a peer of Great Britain; but this plea was over-ruled, as no privilege can obtain against an appeal, for that would be a total bar to the proceeding, as it can only be heard in a session

session of parliament; and judgement was given in favour of lord Meath, after a long process, which lasted till 1695, and the sheriff was ordered to give him possession of the lands accordingly. During the interval of parliament, lord Dudley appealed from the determination of this house to the lords of England, who pronounced that the proceedings here were coram non iudice, before an incompetent judicature, and ordered the chancellor of that court to enforce their decree in favour of lord Dudley. When your lordships ancestors met in 1703, after an intermission of parliament for four years, upon the petition of lord Meath, they enforced their order with great spirit, and came to several resolutions vindicating their jurisdiction: possession was awarded to lord Meath, and the family had possession of the lands in question for upwards of thirty years; but, in the year 1736, upon a petition to the lords of England, they resumed this matter again; a report was made of the whole proceedings, an order was sent over to the the chancellor Windham; to give possession

of the lands to the representative of lord Dudley, as the court and county palatine of Tipperary were extinguished by the attainder of that illustrious family, who were an honour to this country, the duke of Ormond. The whole proceedings upon this affair, the letters that passed between lord Talbot and the chancellor Windham, are inserted at length in the Journals of the lords of England. My lords, I cannot help observing here, that the author of a late pamphlet is wrong in his observation, that the lord Meath's representatives held the land under an order of your lordships ancestors, for that order was laid aside by the last determination of the lords of England.

From this plain state of facts, your lordships see that no right was ever better founded nor better ascertained than the jurisdiction of this house; the whole number of appeals, that appear on your Journals from 1642 to 1717, amounts to thirty-eight.

I shall now beg leave to contrast so founded and so proved a right with the declaratory law,
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the 6th of George I. which I shall read as a part of my speech*.

To

* An act for better securing the dependency of the kingdom of Ireland upon the crown of Great Britain :

“ Whereas the house of lords of Ireland have of late, against law, assumed to themselves a power and jurisdiction to examine, correct, and amend, the judgements and decrees of the courts of justice in the kingdom of Ireland ; therefore, for the better securing of the dependency of Ireland upon the imperial crown of Great Britain, may it please your most excellent majesty, that it may be declared, and be it declared by the king’s most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that the said kingdom of Ireland hath been, is, and of right ought to be, subordinate unto, and dependent upon, the imperial crown of Great Britain, as being inseparably united and annexed thereunto ; and the king’s majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, of Great Britain, in parliament assembled, had, hath, and of right ought to have, full power and authority to make laws and statutes of sufficient force and validity to bind the kingdom and people of Ireland.

“ And be it farther declared and enacted, by the authority aforesaid, that the house of lords of Ireland have not,

To the words, *of late, and against law*, your lordships cannot be inattentive; these words surely are strangely applied to the chartered right of this house, to the custom and long tide of precedents for three centuries; never sure was such an unparalleled act of injustice, never was the omnipotence of parliament so extended, not only over right and justice, but over truth itself; an omnipotence, greater than that of the supreme Being himself; for he can do no wrong: but this act decided that the British parliament, swayed by the lust of power, could do flagrant wrong and notorious injustice.

I am to apologize for having dwelt so long upon this subject; a subject so arduous as to involve no less than the complete investigation of

not, nor of right ought to have, any jurisdiction to judge of, affirm, or reverse, any judgement, sentence, or decree, given or made within any court within the said kingdom; and that all proceedings before the said house of lords, upon any such judgement, sentence, or decree, are, and are hereby declared to be, utterly null and void to all intents and purposes whatsoever."

of the Journals of the two houses of lords in both kingdoms.

My lords, I am well aware that there are various opinions in this country about right and expedience: those, who think the right of jurisdiction vested clearly in your lordships in the last resort, think that justice will be more impartially administered by a final reference to a foreign tribunal, as it has been under the compulsion of the declaratory law; I know prejudices are entertained against the incompetence of this house to decide upon legal matters in the dernier resort.

In this variety of opinion, let the public voice decide; I do not presume to pronounce mine upon such a question; I am inclined to believe, that there was an appeal allowed, by the constitution, to the king in his parliament of Great Britain; I remember to have seen an instance recorded of it in the rolls of parliament in the 22d year of Edward I. If that be the case, it is left to the public choice; but there is no reason we should be deprived of

of our franchise, of our inalienable privilege, nor this country of the advantage of a domestic tribunal, agreeable to the charter of the third Edward, of the maxim of the founder of the constitution of Alfred, that justice should be brought home to every man's door.

Those, my lords, who think that the lords of England decide upon legal matters, are much deceived: formally, indeed, they do, but, in fact, prescribed and dictated to, in these matters, by the sages of the law.

So will it also be here; whenever our jurisdiction shall revive, the administration of justice, in the last resort, will be by the judges and sages of the Irish law.

Constituted as they are at present, every regard is due to them from their country. Why should the Irish bar be deprived of its emoluments, of its credit, of its honour? If, in ruder and more uninformed times, justice was administered in this country without complaint in this house, why should the course be altered in a more scientific and enlightened period?

My

My lords, I have lately heard some doubts thrown out, that this house had never any cognizance of writs of error, though they had of appeals; and that the constant practice was, to remove them to the king's bench in England; I shall therefore beg leave to say a word on that subject, and to dwell particularly on the precedents of writs of error in our Journals.

There are four precedents of writs of error in this house before the Restoration; and in the year 1662, the mode of proceeding upon them was settled by the following entry in your Journals.

“ Memorandum, that the lord Santry,
 “ chief justice of the king's bench, declared,
 “ that he was commended by writ of error,
 “ to bring in a record of a judgement between
 “ Robert Park, Esq. plaintiff, and Kean
 “ O'Hara, and Uxor, defendants; and that,
 “ according to custom, the original ought
 “ to be returned to said court, having first
 “ compared a transcript therewith which
 E “ rule

“ rule was accordingly observed and the transcript ordered to be read the first day of
 “ next sitting.”

My lords, in consequence of five records which were brought in by the chief justice here, in 1710, a committee was appointed to consider the mode of proceeding, and the foregoing precedent was reported as the rule of proceeding.

This mode of proceeding obtained till the suspension of our jurisdiction in 1717, during which period there are many precedents of writs of error in this house.

It is necessary to mention, that the standing orders are framed, with regard, not only to appeals, but to writs of error, on the same plan of those in the house of lords of England, and that an act of parliament passed in the 6th year of George I. for the limitation of writs of error; so that writs of error have been determined upon in this house grounded on ancient practice, regulated by the standing orders, warranted and countenanced by the law of the land.

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In a variety of matter, it elapsed my memory, to mention how materially the rights of parliament at large, of the house of commons, were interested in our jurisdiction; in one branch of it, I mean; seldom, I hope, to be exerted; the right of impeachment: for, if this house is no court of justice, that privilege also falls to the ground. Two instances of this I remember to have heard of in the Journals of the house of commons, in the case of the chancellor, Sir Richard Bolton, and Sir George Ratcliffe, before the great rebellion; the other in later times, in the case of the lord chancellor Porter: in the first of these, a doubt having been started about our criminal jurisdiction, the house of commons set forth, in an ample manner, and asserted their own and our right to parliamentary impeachment.

But shall I, my lords, remember antient, and forget recent, merit? shall I think of an old vindication of our rights, and forget the splendid example of yesterday? No, my lords, the gentlemen, to whom the present glorious

system of our emancipation is due, demands a tribute from the nobility, as well as the people, of this country, to crown and consummate his well-raised praise he did not forget, that the rights of parliament and its independence, was wounded through our sides; I am happy to repeat the public opinion within these walls; no man sure ever deserved better of his country; and, if the Roman people to a man rose up in the theatre to do honour to the poet, the restorer of industry, and of agriculture, the same eulogy is due to the asserter and effectual vindicator of the freedom of his country; classical language and classical allusions are not misplaced here; the powers and eloquence exerted were equal to the cause that he pleaded.

*Nec dignius unquam majestas meminit
fese Romana locutam.*

My lords, I am to apologize for this digression, I shall revert now, and say a conclusive word on the great subject which is, at present, the object of your lordships contemplation.

Admitting,

Admitting, my lords, for a moment, and for the sake of argument, that we had been bound by the laws of England, when expressly named, yet were we never bound by this law; because the recital is erroneous, because it is built upon misconception, because it is unwarrantable in its conclusion, because it asserts the thing that is not; for, my lords, nothing is more clear than this, than that all the precedents, which I have cited to your lordships, from the charter of the third Edward to the year 1717, are fabulous and legendary, or that the recital in the declaratory law is fallacious; both of them cannot be true, they cannot both consist and agree together.

My lords, what are the words of the declaratory law, *of late*, and *against law*? What! is that practice against law, which has obtained under the charter of the third Edward? is that a late practice which has obtained for upwards of four hundred years?

My

My lords, I am to apologize for entering so deep into this arduous subject, I know well to whom I have the honour to address myself, I know well that I speak under the criticism, animadversion, and correction, of the sages of the law.

If I have not spoke equal to the subject, I have spoke to the best of my abilities, but, what is more, to the best of my intentions.

To promote the credit and advantage of the assembly I belong to has early been the object of a laborious life ; I began with that pursuit from my first entrance into this assembly, I shall terminate my days with the same wish. Whether or not my labours deserve to dwell for a moment in the attention of the present, or in the recollection of the future, race, is more that I call tell, but this I know, that it is mine, and the duty of every man, in my situation, to endeavour, at least, to deserve that they should ; I will not say, by genius and ability, by the gifts of great powers and transcendent eloquence, but by labour, by industry,

industry, by early indefatigable application to the privileges of the assembly to which I have the honour to belong, to the birthrights of the peerage, to the independence of our parliament, to the public voice, which pronounces that it must be free, to the security of the commercial advantages we have recently obtained, to the lasting peace and constitutional security of this country.

My lords, I beg a thousand pardons for trespassing so long upon your patience, I turn my eyes to the clock with regret, when it reminds me how long I have intruded upon your time, the patronage of your lordships to my early, premature exertions, which accompany me to a maturer day; the politeness and attention which this house always honours me with upon this, and every other, occasion, are my best defence, my only apology and vindication.

F I N I S.

industry, or early industrious application
to the pursuit of the study to which I
have now turned to follow, and the advantages
of the study to me, I am sensible of our
position, to the public voice, which pro-
motes it, and I am sure, to the industry
of the study, advantages we have reason
to be satisfied, to the last, peace and confi-
dence, the study of the country.

My father, I beg a thousand pardons for
not having been more frequently in your
company, when it is
my mind and heart I have turned upon your
time, the promise of your labours to my
early, premature exertions, which accompany
me to a distant day; the boldness and as-
sertion which this study always honours me
with upon this and every other occasion, and
myself, my only study and mine.

*The following is the Case of the London Company
and the Bishop of Derry, which is alluded to
in the foregoing speech.*

10th of May, 1698.

The case of the society of the governor and
assistants of the new plantation of Ulster,
in Ireland, appellants ; against William,
lord bishop of Derry.

The said society, who are a corporation,
made out of the twelve companies of London,
being seized, inter alia, of the hill on which
the city of Derry is built, and four thousand
acres of land adjoining, by several leases from
the committee of England, which were made
in consideration of great charges in building
the said city of Derry and several other for-
tresses thereabouts, and planting and peo-
pling those parts with protestant tradesmen,
artificers, and husbandmen, to the great se-
curity and advantage of that kingdom and
the reformed religion there, the said society
did assign and set out to the said city, soon after
its being built, about fifteen hundred acres,

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part

part of land, to be held under the same society, at some small rent or acknowledgement for the support of the magistracy thereof; they having little else for that purpose; which that city has all along enjoyed accordingly, and the society have been still known to be the proprietors thereof, and were found to be so by the public survey in Ireland, commonly called the civil survey, in the year 1654, as thereby appears, and they have always paid and do still pay, the king's rent for the same to this day, and by several entries in the common-council books in the city of London, from the first building of Londonderry, about the year 1610; the society's title to these lands and the grant and tenure of the same from and under them, as aforesaid, is manifest; and, by depositions taken in this case, by very antient witnesses there resident, does appear; yet, notwithstanding all this, and although by the grand inquisition which was taken at Derry, in Ireland, about ecclesiastical land belonging to the crown, these lands were not found to be bishops lands, and to be part of the lands escheated from the crown, yet the present
bishop

bishop of Derry hath now lately set up a claim to those lands as belonging to the see; and that either as a part of the antient possessions belonging thereto, which is contrary to the said inquisition, or by colour of some grant from Charles I. to bishop Bramhall, his predecessor, which will appear to be void and pass for nothing; the said society being then, and long before, actually seized by their letters patent, which letters patent were obtained upon some private contrivance or compact between the said bishop and the city of Derry, who were the tenants of those lands to the said society without the knowledge and in prejudice of the said society, there being by the said grant 90*l.* 10*s.* per ann. reserved to the said city for ever and out of the said lands: and farther it it pretended, in behalf of the said present bishop of Derry, that the said bishop Bramhall had made a lease of those lands to the city of Derry, for a long term of years, which, as it is confessed, did expire in 1694, and that the said city had paid a rent thereupon and consequently that he had a possession; of all which the said society heard nothing, till

the year 1692, and then, being informed that such letters patent and lease were pretended to be in prejudice of their inheritance, and that the now bishop was setting up a claim to the premises aforesaid, they ordered their general agent to secure and continue their possession of the said lands, which they conceived they still had, and were justly intitled to, and he accordingly did it in July, 1694. Then the said bishop, in October, 1694, brought his bill in chancery in Ireland, without alleging of any grant to bishop Bramhall in order to be restored to, and quieted in the said supposed possession, and many persons, parties to his bill, who answered the same; yet none of them could say, that the said lands were belonging to the see, or that they knew of his right; and on the hearing there was no proof of any kind of title or seizing, but only that some of the defendants had confessed, in their answers, that bishop Bramhall had made such a lease, as aforesaid, to the city of Derry, and that a rent, or yearly sum had been paid on that account to the bishop of Derry, from 1662 to 1694, but no actual entry of any bishop on
said

said lands, at any time, did at all appear; but the city of Londonderry had continued always in the possession as under their first title from the society, though they had paid such rent to the bishop of late, merely as as being concluded at law, by taking the said lease to avoid such payment, which lease could pass no interest or possession, the bishop having none that made it, and at most it would only work by estoppel between the parties during the lease and no longer; and, being expired, all pretence on that account was gone.

The lord chancellor, on hearing the cause, ordered an issue at law, to try whether the said bishop, or any of his predecessors, had ever any, or what, possession of said lands, or to that effect, and from that interlocutory order, before any trial or decree, the bishop appealed to the house of lords in Ireland, who ordered that the chancellor's order should be reversed, that the bishop should be restored to the lands in question, by an injunction of that house; and the same was accordingly done

soon

soon after by the sheriffs of Londonderry and the society turned out of their possession.

The society having therefore appealed to your lordships from thence, and the appellants do pray that the said appeal may be received.

1st, For that no appeal, or writ of error, as is conceived, lies to the house of lords of Ireland in any case; but the errors of the courts of law and equity there are to be reformed in England, and the appeal to the house of lords there is of dangerous consequence, and may tend to the hazard of the English constitution and government there; if the same should be allowed by your lordships, it will equal the jurisdiction of the lords of parliament in Ireland to that of the English peerage, which was never the design of Poyning's law.

2dly, In case the house of lords there have a power of hearing and examining such appeals, yet their orders are not final, but subjected to re-examination before your lordships, who are the supreme court of judicature as well

well for that as this kingdom, as is humbly hoped will appear to every man who shall impartially consider, among other reasons and authorities:

1st, The true original and title of property in Ireland, as derived from and under the crown of England.

2dly, The equality of reason for a subordination in judicature to the judicial power here, as in the legislature to the legislative power of England.

And 3dly, The protection which the plantation of Ireland always receives from the mother country, with the vast sums of money she owes to England on that account, and dependency resulting therefrom in all respects whatsoever, which if appeals there be final, will, in a great measure, be destroyed; wherefore, it is most humbly prayed that your lordships will receive and examine this appeal, and the rather in this case, because the order of the chancery there was just and reasonable; first, by a title at law to settle the right to the

the possession before the court, would change the possession from the appellants, to give it to the bishop who did not appear to have a better nor so good a right as the appellants had: but, leaving the merits of the cause to your lordships just judgement when the same shall come to be heard before this honourable house, it is hoped the appeal will be received for the reasons abovementioned.

B. SHOWER.

THE END.

